

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 27, 2017

523538

In the Matter of PERRY BELLAMY,
Petitioner,

v

MEMORANDUM AND JUDGMENT

DONALD VENETTOZZI, as Acting
Director of Special Housing
and Inmate Disciplinary
Programs,
Respondent.

Calendar Date: June 12, 2017

Before: McCarthy, J.P., Garry, Lynch, Clark and Rumsey, JJ.

Perry Bellamy, Elmira, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Kathleen M. Treasure of counsel), for respondent.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of the Commissioner of Corrections and Community Supervision finding petitioner guilty of violating certain prison disciplinary rules.

Petitioner was charged in a misbehavior report with possessing a weapon and smuggling. According to the misbehavior report, petitioner reported that he had swallowed a weapon two days earlier that he had been concealing in his mouth and that it was caught in his throat. After being examined at the correctional facility infirmary, petitioner was transported to an outside medical center, where an X ray revealed no weapon or unusual object in petitioner's throat or body, and it was

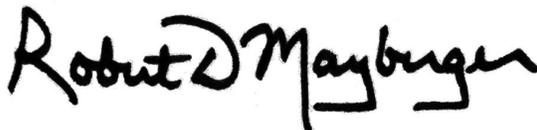
determined that the soreness in his throat was the result of where the weapon had previously been lodged. Following a tier III hearing, petitioner was found guilty of both charges, and that determination was affirmed upon administrative appeal. This CPLR article 78 proceeding ensued.

We confirm. Contrary to petitioner's contention, the detailed misbehavior report, authored by the correction officer to whom petitioner made the admission about the weapon, is sufficient, by itself, to provide substantial evidence supporting the determination of guilt (see Matter of Simmons v LaValley, 130 AD3d 1126, 1127 [2015]; Matter of Karacostantakis v Prack, 107 AD3d 1277, 1277 [2013]; Matter of Figueroa v Lacy, 260 AD2d 765, 766 [1999]). We are unpersuaded by petitioner's contention that the determination should be annulled because no weapon was seen on the X ray or recovered. The misbehavior report, which the Hearing Officer found credible, relates that petitioner admitted that he had swallowed a weapon and indicated that the weapon may have passed through his stool prior to reporting the incident. Under these circumstances, the determination of guilt will not be disturbed (see Matter of Hall v Fischer, 87 AD3d 1235, 1236 [2011]).

McCarthy, J.P., Garry, Lynch, Clark and Rumsey, JJ.,
concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed

ENTER:



Robert D. Mayberger
Clerk of the Court